

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**J.G., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Northumberland, PA, Employer**

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**Docket No. 07-243  
Issued: May 16, 2007**

*Appearances:*

*Jeffrey P. Zeelander, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On November 6, 2006 appellant filed a timely appeal of the October 24, 2006 merit decision of the Office of Workers' Compensation Programs which denied his claim for wage-loss compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.<sup>1</sup>

**ISSUE**

The issue is whether appellant was disabled due to his accepted employment injury during the period March 8, 2004 to July 10, 2006.

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<sup>1</sup> The record on appeal contains evidence that was received after the Office issued its October 24, 2006 decision. The Board may not consider evidence that was not in the case record when the Office rendered its final decision. 20 C.F.R. § 501.2 (2006).

## **FACTUAL HISTORY**

On July 28, 2005 appellant, then a 55-year-old retired city carrier, filed an occupational disease claim alleging that he injured his cervical spine as a result of his employment.<sup>2</sup> He attributed his condition to carrying a 35-pound mailbag and daily repetitive twisting of the neck. Appellant first became aware of his cervical condition in December 1995, but he did not realize the condition was employment related until July 26, 2005.

On June 20, 2006 the Office accepted appellant's claim for aggravation of cervical and lumbosacral arthritis. The Office based its acceptance on the June 1, 2006 report of Dr. Russell N. Worobec, a Board-certified orthopedic surgeon and Office referral physician. On July 10, 2006 appellant filed a claim for wage-loss compensation for the period March 8, 2004 to July 10, 2006.

In a July 27, 2006 supplemental report, Dr. Worobec explained that the progressive arthritic changes noted in appellant's cervical and lumbosacral spine were not work related, but attributable to his age and two prior motor vehicle accidents.<sup>3</sup> He also explained that whatever aggravation had occurred was temporary and ceased when there was no longer any work activity. Dr. Worobec stated that appellant's work activities did not produce any longstanding permanent affects. According to him, there was no period of total disability attributable to appellant's work activities.

In a decision dated October 24, 2006, the Office denied appellant's claim for wage-loss compensation for the period March 8, 2004 to July 10, 2006.

## **LEGAL PRECEDENT**

A claimant seeking benefits under the Federal Employees' Compensation Act<sup>4</sup> has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.<sup>5</sup>

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<sup>2</sup> Appellant last worked on January 6, 2004, and he retired effective March 8, 2004.

<sup>3</sup> Appellant was involved in a March 1999 nonwork-related motor vehicle accident and as a result underwent a discectomy at L4-5. He was involved in a second motor vehicle accident in March 2002.

<sup>4</sup> 5 U.S.C. § 8101 *et seq.* (2000).

<sup>5</sup> 20 C.F.R. § 10.115(e), (f) (2006); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

### **ANALYSIS**

The record is devoid of any medical evidence attributing appellant's claimed disability to his accepted condition of aggravation of cervical and lumbosacral arthritis. Dr. Worobec is the only physician of record to address the issue of employment-related disability. He unequivocally stated that whatever aggravation occurred due to work factors was temporary and ceased when there was no longer any work activity. Additionally, Dr. Worobec explained that the progressive arthritic changes in appellant's cervical and lumbosacral spine were attributable to his age and two motor vehicle accidents and not employment related. He opined that appellant's employment exposure did not produce any longstanding permanent affects.

The period of disability claimed -- March 8, 2004 to July 10, 2006 -- began some three months after appellant ceased working and reportedly continued for more than two and a half years after his last employment exposure. Dr. Worobec stated that the employment-related aggravation of appellant's cervical and lumbosacral arthritis ceased when appellant stopped working, which was January 6, 2004. As the medical evidence does not establish that appellant was disabled from March 8, 2004 to July 10, 2006 due to his accepted injury, the Office properly denied the claim for wage-loss compensation.

### **CONCLUSION**

Appellant failed to establish that he was disabled from March 8, 2004 to July 10, 2006 due to his July 26, 2005 employment injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the October 24, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 16, 2007  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board